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No. 86 - 1104

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

MICHAEL LeSHOURE,

Petitioner,

vs.

STATE OF ILLINOIS,

Respondent.

**On A Petition For Writ Of Certiorari To The
Appellate Court Of Illinois, Fourth District**

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

1. Whether Illinois Revised Statutes, 1985, ch. 56½, par. 1505(a) as interpreted and applied by the Appellate Court of Illinois, satisfies all applicable requirements of procedural due process.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED FOR REVIEW ...	i
TABLE OF AUTHORITIES	iii
REASON FOR DENYING THE WRIT:	
I.	
THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE ILL. REV. STAT., 1985, CH. 56½, PAR. 1505(a) AS INTER- PRETED AND APPLIED BY THE APPELLATE COURT OF ILLINOIS, SATISFIES ALL APPLI- CABLE REQUIREMENTS OF PROCEDURAL DUE PROCESS	1
CONCLUSION	3

TABLE OF AUTHORITIES

<i>Cases</i>	PAGE
<i>Landmark Communications, Inc. v. Virginia</i> , 435 U.S. 829, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978) ..	2
<i>O'Brien v. Skinnr</i> , 414 U.S. 524, 93 S.Ct. 740, 38 L.Ed.2d 702 (1974)	2
<i>People v. LeShoure</i> , 143 Ill.App.3d 839, 493 N.E.2d 687 (1986)	2
<i>Statute</i>	
Ill. Rev. Stat., 1985, ch. 56½, par. 1505(a)	1, 2



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REASON FOR DENYING THE WRIT

I.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE ILL. REV. STAT., 1985, CH. 56½, PAR. 1505(a) AS INTERPRETED AND APPLIED BY THE APPELLATE COURT OF ILLINOIS, SATISFIES ALL APPLICABLE REQUIREMENTS OF PROCEDURAL DUE PROCESS.

The petitioner asserts that Ill. Rev. Stat., 1985, ch. 56½, par. 1505(a) (which authorizes the forfeiture of certain items related to illegal transactions in controlled sub-

stances) is unconstitutional in that it fails to provide basic procedural due process requirements such as notice and an opportunity to be heard prior to the forfeiture. (Pet. p. 6) However, the Appellate Court of Illinois for the Fourth Judicial District has interpreted this statute as requiring basic procedural due process. The Court noted that this statute "contemplates a forfeiture proceeding brought in the circuit court of the county where the seizure took place." *People v. LeShoure*, 143 Ill.App.3d 839, 842-843, 493 N.E.2d 687, 689 (4th Dist. 1986). Furthermore, the Court stated "we conclude that proceedings held under [Ill. Rev. Stat., 1985, ch. 56½, par. 1505(a)] meet constitutional muster when, as here, the proceedings are commenced by a petition, proper notice is given, and they are conducted in a traditional manner for court proceedings." *Id.*, 143 Ill.App.3d at 844, 493 N.E.2d at 689-690. The Court went on to state that under prior Illinois Supreme Court decisions "the requirement for notice and ordinary proceedings is inferred from the legislation." *Id.*

This decision is the only reported decision interpreting this statute relative to this question. Therefore, under the principles of *stare decisis* the validity of all future forfeiture proceedings will depend upon the litigants being afforded the same notice and opportunity to be heard afforded to the petitioner in the instant proceedings. Moreover, this Court should consider the validity of the statute in light of its interpretation by the state courts. *O'Brien v. Skinner*, 414 U.S. 524, 532, 94 S.Ct. 740, 744, 38 L.Ed.2d 702 (1974); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829, 838 n.3, 98 S.Ct. 1535, 1540 n.9, 56 L.Ed.2d 1 (1978).

Given the fact that the petitioner was afforded notice and an opportunity to be heard and that the appellate court has interpreted this statute in such a manner that

will assure such protection to all future litigants, there is no need for this Court to consider the constitutionality of this statute.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny the instant petition for a writ of certiorari.

Respectfully submitted,

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